

COMPANY VOLUNTARY ARRANGEMENTS (CVA)

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This is an alternative to liquidation, that was introduced into law by the Insolvency Act, 2015. A Company Voluntary Arrangement (CVA) allows a company to restructure its debts by proposing a compromise between the company and its creditors.

The company through its directors are required to come up with a proposal to satisfy its debts or rearrange its financial affairs. Proposals may contain information on restructuring debt, repayment terms, conversion of debt to equity, and/or making other financial adjustments, appointment of an authorized insolvency practitioner to supervise a voluntary arrangement.

Persons eligible to make a proposal under CVA are either, the directors of a company, an Administrator (if the company is under administration) or a liquidator (if the company is in liquidation).

ROLES BY VARIOUS ACTORS IN A CVA

1. The Company/Directors

Their role is solely to enable the provisional supervisor to prepare the report to court by furnishing them with a document setting out the terms of the proposal and a statement of the company's financial position itemizing particulars of its creditors, its liabilities and its assets.

2. The Supervisor

i. Submit a report to the Court averring whether the proposal has a reasonable prospect of being approved and if the meetings of the company and its creditors should be convened to consider the proposal as well as the modalities of the meetings.

ii. Convene and Chair meetings for consideration of the proposal.

iii. When the proposal is approved, the Supervisor is responsible for implementing the voluntary arrangement in the interests of the company and its creditors and also monitoring compliance of terms by the company.

3. The Courts

Their role is also supervisory/oversight with an aim to ensure fairness and enforceability. They also adjudicate on with matters affecting the rights of parties or the voluntary arrangement itself.

4. The Creditors

- i. Submit their proofs of debt and proxies (if need be)
- ii. Decide on the viability of the proposal is tabled to them by discussing, voting on the proposal (within their respective classes).
- iii. Adopting the proposal with or without modifications or rejecting it as well.

THE PROPOSAL

The proposal is considered to be passed when:

- a. It is approved by a majority of members of the company present and a three quarters majority in value of creditors of each class; or
- b. Though not approved by a majority of members of the company, it is approved by a three quarters majority in value of creditors of each class.

If accepted, the proposal takes effect on the date of approval by creditors and is binding on all parties i.e. members of the company and creditors (including a secured creditor and/or a preferential creditor), whether present/represented at the meeting or not.

The Court then adopts the proposal and the implementation process of the proposal is overseen by a supervisor who is an authorized Insolvency Practitioner. Where there was an ongoing liquidation/administration process, the Court may make orders staying proceedings in the liquidation, or suspending/terminating the appointment of the administrator or any other orders it deems fit.

A party may challenge the approved voluntary arrangement on grounds that it unfairly affects their interests or that there was a material irregularity in relation to the meetings. Thereafter, the Court may revoke/suspend a decision that was made approving the voluntary arrangement or direct the supervisor to convene further meetings to reconsider the original proposal or a revised proposal.

It is worth noting that there's no statutory time limit for a voluntary arrangement, its term of implementation is guided by the approved proposal. However, a voluntary arrangement ceases to have effect when it has not been fully implemented in respect of all persons bound & terms of the arrangement.